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14 **UNITED STATES DISTRICT COURT**

15 **NORTHERN DISTRICT OF CALIFORNIA**

16 **SAN FRANCISCO DIVISION**

17 SKYWEST PILOTS ALPA ORGANIZING
 18 COMMITTEE, et al.,

Case No. C-07-2688 CRB

19 Plaintiffs,

**DEFENDANT'S REPLY IN SUPPORT OF
 MOTION TO COMPEL**

20 vs.

21 SKYWEST AIRLINES, INC.,

22 Defendant.

28 **DEFENDANT'S REPLY IN SUPPORT OF MOTION TO COMPEL**
 CASE NO. C 07-2688 CRB

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1 Defendant SkyWest Airlines, Inc. ("SkyWest" or the "Company") hereby submits its reply
 2 brief in support of its motion to compel Plaintiff Air Line Pilots Association, International ("ALPA")
 3 to produce certain information requested by SkyWest in discovery relating to financial support
 4 received by ALPA from the carriers whose pilots it represents.

5 **I. BACKGROUND**

6 SkyWest is an airline headquartered in St. George, Utah. ALPA is a labor union that, at the
 7 time this suit was filed in May 2007, sought to become the collective bargaining representative of
 8 SkyWest's pilots. The other Plaintiffs in this suit are individual SkyWest pilots who supported
 9 ALPA's efforts and the SkyWest Pilots ALPA Organizing Committee.

10 Plaintiffs raised two types of claims in their Complaint, one of which is particularly pertinent
 11 to this discovery dispute: that SkyWest violated the RLA by "funding, promoting, recognizing,
 12 purporting to bargain with, and otherwise supporting" the SkyWest Airline Pilots Association
 13 ("SAPA"). Complaint, ¶¶ 48-52.

14 On February 21, 2008, SkyWest served on ALPA its first set of interrogatories and document
 15 requests, seeking information related to the financial relationship between ALPA and the carriers
 16 whose pilots it represents, as well as information relating to litigation in which ALPA has been a
 17 party that involved claims that financial support or compensation provided to ALPA by any carrier
 18 violated the RLA. The following four interrogatories are germane to this motion:

19 Interrogatory 3: Identify any and all compensation provided by any
 20 airline whose pilots are represented by ALPA to any local or national
 21 ALPA officer, employee, agent, representative, or committee member,
 22 including but not limited to a description of each expenditure, its
 23 purpose, and amount. "Compensation" includes, but is not limited to,
 24 wages, salary, reimbursement of lost flying opportunities, bonuses,
 25 benefits, reimbursed travel, and other perquisites. In responding to
 this interrogatory, you need only provide information relating to
 compensation that an individual received by virtue of his or her status
 and/or work performed as a local or national ALPA officer, employee,
 agent, representative, or committee member, not as an employee of the
 airline. In addition, you need not identify or provide the value of any
 compensation which ALPA reimbursed to the airline in question.

26 Interrogatory 4: Identify any and all financial support provided by any
 27 airline whose pilots are represented by ALPA to ALPA, including but
 28 not limited to a description of each expenditure, its purpose, and

1 amount. For purposes of this interrogatory, "financial support" includes, but is not limited to, any payments or reimbursements to ALPA; any expenses incurred by ALPA that were paid directly or reimbursed by the airlines; and any expenses incurred by ALPA in connection with ALPA business that were paid directly or reimbursed by the airlines.

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5 Interrogatory 5: Identify any and all in-kind support provided by any airline whose pilots are represented by ALPA to ALPA. Your description should state the value of each item of in-kind support and the basis used to calculate its value.

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11 Interrogatory 14: Identify any and all litigation, including but not limited to *Barthelemy v. Air Lines Pilots Ass'n*, 897 F.2d 999 (9th Cir. 1990), in which compensation or financial support (as those terms are defined in Interrogatories 5 and 6 above) to ALPA and/or any local or national ALPA officer, employee, agent, representative, or committee member was alleged to violate Section 2, Third and/or Section 2, Fourth of the Railway Labor Act. For purposes of this interrogatory, "litigation" includes, but is not limited to, any lawsuit, counter-claim, cross-claim, arbitration, administrative proceeding, or bankruptcy adversary proceeding in which such allegation was made.

12
13 SkyWest served document requests to ALPA (requests 5, 6, and 7) that corresponded with
14 Interrogatories 3, 4, and 5, respectively. SkyWest's document request 30 sought production of all
15 "briefs, motions, and other documents filed or submitted by ALPA" relating to ALPA's position in
16 the litigation identified in response to Interrogatory 14 regarding the allegation that compensation or
17 financial support it received from carriers violated the RLA.

18 ALPA served discovery its responses on May 5, 2008. With respect to Interrogatories 3
19 through 5, ALPA gave the same substantive response:

20 Plaintiff specifically objects to this Interrogatory to the extent that it calls for
21 information protected by the attorney-client, attorney work product, or other
22 privilege. Plaintiff further objects on the basis that this Interrogatory is
23 overbroad, unduly burdensome, and not calculated to lead to the discovery of
24 relevant evidence. Subject to and without waiving the foregoing general and
25 specific objections, ALPA states that collectively-bargained agreement negotiated
on behalf of the pilots it represents reflect the nature and scope of financial
arrangements between ALPA and the carrier whose pilots ALPA represents and
those arrangements vary among the 41 carriers represented.

26 Likewise, ALPA provided an identical response to each of SkyWest's document requests 5
27 through 7:

1 Plaintiff specifically objects to this Request as unduly burdensome to
 2 the extent that it calls for documents protected by the attorney-client or
 3 attorney work product privilege. Plaintiff further objects on the basis
 4 that this Request is overbroad in that it is not reasonably calculated to
 5 lead to the discovery of admissible evidence. Plaintiff further objects
 6 on the basis that this Request is not limited to time and is thus unduly
 7 burdensome. Subject to and without waiving its objections, Plaintiff
 8 will produce provisions of current collectively bargained agreements
 9 negotiated on behalf of the pilots it represents in effect that reflect the
 10 nature and scope of financial arrangements between ALPA and the
 11 carrier whose pilots ALPA represents.

12 Finally, with respect to each of Interrogatory 14 and Document Request 30, pertaining to
 13 litigation in which the compensation or financial support it received was alleged to violate the RLA,
 14 ALPA objected on the ground that the request was "unduly burdensome insofar as it is unlimited as
 15 to time and seeks information that is publicly available and is overly broad because it is not
 16 reasonably calculated to lead to the discovery of admissible evidence."

17 SkyWest also has served ALPA with a deposition notice pursuant to Federal Rule of Civil
 18 Procedure 30(b)(6). Among the topics listed in the deposition notice were those covered in
 19 Interrogatories 3, 4, 5 and 14. ALPA has informed SkyWest that it will not produce a witness or
 20 witnesses to testify on those matters, absent a court order compelling it to do so.

21 **II. ARGUMENT**

22 In response to SkyWest's motion to compel, citing Fed. R. Civ. P. 26(b)(1), ALPA tells the
 23 Court that the legal standard applicable to SkyWest's motion to compel is that, "SkyWest may only
 24 discover material that is 'relevant to any party's claim or defense.'" Pl. ALPA's Opp. To Def.'s
 25 Mot. To Compel, p. 5:3-4 (hereinafter, "ALPA's Opp."). What ALPA implies is that "relevant"
 1 means "admissible"; but that clearly is not the law. "Relevant," for the purposes of Fed. R. Civ. P.
 2 26(b)(1), means that the "information need not be admissible at the time of trial if the discovery
 3 appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P.
 4 26(b)(1). "Relevance for purposes of discovery is defined very broadly." *Garneau v. City of Seattle*,
 5 147 F.3d 802, 812 (9th Cir.1998).

26 As shown herein, the information sought by SkyWest is discoverable and is not subject to
 27 any of the limitations on discovery cited by ALPA.

1 A. Introduction

2 ALPA argues that SkyWest is not entitled to the information it seeks because (1) “ALPA’s
3 relationship to non-SkyWest carriers bears no nexus to the separate SkyWest-SAPA relationship in
4 this case,” ALPA Opp., at 6:8-9; in other words, stripped of obfuscation, ALPA says the materials
5 SkyWest seeks are not relevant, (2) ALPA’s briefs in other cases are not relevant, *id.* at 10:13, (3)
6 the Company’s requests are overbroad, *id.* at 11:9, and (4) the materials can be obtained from other
7 sources, *id.* at 12:3-4. As to the first three arguments, ALPA seems to misapprehend the Company’s
8 rationale for demanding the information. As to the fourth argument, ALPA’s position facially is
9 absurd.

10 Assessment of ALPA’s first three excuses for resisting discovery requires a brief review of
11 the parties’ positions. We start with Section 2, Fourth of the RLA, 45 U.S.C. § 152, Fourth. It
12 states that, “it shall be unlawful for any carrier to . . . use the funds of the carrier in maintaining or
13 assisting or contributing to any labor organization [such as ALPA], labor representative, or other
14 agency of collective bargaining [such as SAPA]. . . .”

15 SkyWest’s position, supported by, *inter alia*, ALPA’s own position in *Barthelemy v. Air Line*
16 *Pilots Ass’n*, 897 F.2d 999 (9th Cir. 1990), is that when deciding if a carrier’s payments to an RLA
17 “representative,” *see* 45 U.S.C. § 151, Sixth, violate Section 2, Fourth of the RLA, the relevant
18 inquiry is whether the financial support compromises the independence of the representative. Def.’s
19 Mem. In Supp. Of Mot. To Compel And To Extend Deadlines, p. 6 (hereinafter, “Def.’s Mem. To
20 Compel”). That means that Section 2, Fourth cannot be read completely literally, for if it were, any
21 degree of support whatsoever would be unlawful.

22 ALPA’s explicit position is that the degree to which SkyWest funds SAPA (indisputably
23 100%) violates Section 2, Fourth. ALPA’s Opp., p. 1. As explained below, the parties’ positions in
24 this case, in conjunction with (1) the seemingly unconditional language in Section 2, Fourth, and (2)
25 ALPA’s position in *Barthelemy*, leads to related factual issues that SkyWest is entitled to explore, in
26 its search for materials that are “reasonably calculated to lead to the discovery of admissible
27 evidence.” *See* Fed. R. Civ. P. 26(b)(1). Those facts pertain to (a) the related propositions that

1 SkyWest's funding of SAPA differs by degree, not type, from the support ALPA receives from
 2 many other carriers and that ALPA presumably would contend is legal, and that there is a common,
 3 industry-standard practice whereby carriers provide funding to unions, and (b) SkyWest's defense of
 4 unclean hands.

5 As to the first two related propositions, for SkyWest to show a common, industry-standard
 6 practice, and that its funding of SAPA differs by degree, not type, from the support ALPA receives,
 7 a baseline for industry common practice must be established. Because of ALPA's dominance in the
 8 airline industry and status as a party, SkyWest will be content to use ALPA's data to show that there
 9 indeed is an industry-wide practice whereby unions – and specifically unions that represent pilots –
 10 routinely obtain financial support from the carriers whose pilots the unions represent. That baseline
 11 would be comprised of information showing how much support ALPA receives from each carrier,
 12 and the reasons for that support. The reasons may or may not be contained in the relevant collective
 13 bargaining agreements ("CBAs").

14 As to the last proposition, SkyWest's purpose in obtaining detailed financial information
 15 from ALPA is to show that ALPA, through words and deeds, practices differently in the world
 16 outside the courthouse than it preaches inside the courthouse. By contending, or more accurately
 17 pretending, in this case that the effect of funding on a union's independence is irrelevant, ALPA
 18 disingenuously tells the Court to read Section 2, Fourth of the RLA literally; and a truly literal
 19 reading would bar any funding whatsoever. The data SkyWest seeks will, it is expected, show that,
 20 to the contrary, ALPA regularly (and legally) accepts very significant financial support from
 21 carriers. If that is the case, those diametrically opposed positions gives ALPA unclean hands and
 22 equity would not permit ALPA to take a different position as the plaintiff in this case than it has
 23 taken (a) as the defendant in *Barthelemy* and (b) on a daily basis as a labor organization that
 24 demands and accepts carrier contributions of literally tens of millions of dollars.¹

25 ¹ If ALPA were to accede to SkyWest's legal position that the proper inquiry is into whether a
 26 representative's independence *actually* has been overridden by carrier contributions, the discovery
 27 SkyWest seeks would indeed be irrelevant. *See, e.g.*, ALPA Opp. at 6:25-7:13, 9:18-26 and cases
 28 cited therein (arguing that SkyWest is not entitled to discovery because what is sought is not relevant
 to SkyWest's position that actual domination of the supported union is the proper test). So long,
 however, as SkyWest is called upon to respond to ALPA's legal theory – that there is some threshold

1 The evidence that ALPA seeks to hide from SkyWest and the Court may well show that what
 2 ALPA self-righteously says is unlawful as to SAPA is, in ALPA's view, entirely legal when applied
 3 to itself. But, of course, that cannot be known until ALPA shares the information demanded by
 4 SkyWest.

5 **B. ALPA's Funding From The Carriers Whose Pilots ALPA Represents Is Highly
 6 Relevant And Not Overbroad**

7 In claiming that the discovery sought by SkyWest is not relevant, ALPA cites numerous
 8 cases that it asserts stand for proposition that materials related to its relationships with other carriers
 9 are not discoverable merely because different entities and transactions are involved. ALPA Opp. at
 10 7:14-8:14. SkyWest's objectives in demanding information is, however, entirely different than in
 11 the cases cited by ALPA. For example, in *United States ex. rel. Stephens v. Prabhu*, 163 F.R.D. 340,
 12 342-43 (D. Nev. 1995), the party seeking discovery of other parties' Medicare documentation
 13 "admitted that they were not influenced by the billing practices of other providers during the
 14 [relevant] time period. . . ." *Id.* at 343. Here, there is no dispute that SkyWest was aware, in general
 15 terms, of the industry-standard practice embodied in ALPA's practices: that ALPA demands and
 16 accepts carrier funds.

17 *Beneficial Fin. Co. of New York v. Fontaine*, 402 F. Supp. 1219 (E.D.N.Y. 1975), similarly is
 18 off point. In that case, the defendant, who admitted falsifying a credit application, sought to obtain
 19 other credit applications in order to show that the lender did not rely upon his false statement.
 20 Discovery was denied because, among other things, the plaintiff averred that each application was
 21 separately considered on its own merit, and because, as a more general proposition, failure to rely in
 22 one case does not speak to reliance in another case. *Id.* at 1221. Here, of course, ALPA has not
 23 taken a position on whether it accepts funding from carriers (but it really cannot deny that it does),
 24
 25

26 at which a carrier's contributions to a union is too much, and thus unlawful – the Company is
 27 entitled to discovery showing that its contributions to SAPA differ by degree, not type, from the
 those received by ALPA, *and that ALPA's position in the courthouse is different than its position
 outside the courthouse.*

1 and SkyWest's purpose is fundamentally different than that of the defendant in *Fontaine*. This case,
 2 and the cases cited by ALPA, fundamentally are different.

3 ALPA's Opposition also harps on its claim that ALPA's relationship with the carriers whose
 4 pilots it represents is entirely different from SkyWest's relationship with SAPA because ALPA is, it
 5 says "overwhelmingly financed from independent sources. . . ." ALPA Opp. at 9:5-6. In support of
 6 that proposition, ALPA tells the Court that out of a total of \$257 million in receipts for fiscal 2007,
 7 substantially less than half - \$108 million - came from its membership. ALPA Opp., at 6:23-24.
 8 Another \$102 million came from the "sale of investments and fixed assets." *Id.* at 6:24-25. That
 9 leaves \$47 million for which ALPA provides no source in its opposition. ALPA's 2007 LM-2,
 10 however, shows that nearly half that amount - approximately \$22 million - came from unidentified
 11 "other" sources." Declaration of Andrew D. McClintock (hereinafter, "McClintock Decl."),
 12 Attachments A (Detailed Summary Page – Schedules 14 through 19), B (Receipts Report).

13 Having asserted that ALPA is "overwhelmingly financed from independent sources," based
 14 upon its LM-2 and the declaration of its Director of Finance, Declaration of Margarita Lorenzetti In
 15 Support of Plaintiff ALPA's Oppositon to Defendant's Motion to Compel (hereinafter, "Lorenzetti
 16 Decl."), p. 3:21-28, SkyWest is entitled to inquire into the accuracy of that assertion. ALPA's
 17 opposition, in short, has opened the very door that it seeks to close.

18 Indeed, it can only be presumed that the unidentified "other sources" on the LM-2 are the
 19 carriers whose pilots ALPA represents. In other words, nearly nine percent (9%) of ALPA's total
 20 income in 2007 - \$22 million dollars - came from carriers. What ALPA does not want the Court or
 21 SkyWest to know is how that \$22 million in income from carriers was distributed among the more
 22 than forty (40) carriers whose pilots ALPA represents, and how that income is allocated inside each
 23 of the Master Executive Councils ("MEC") it has established at each such carrier, and why that sum
 24 of money was paid.²

25
 26 ² Under ALPA's structure, a unit called an Master Executive Council ("MEC") is formed at each
 27 carrier whose pilots ALPA represents. Each MEC at each carrier is led by an MEC Chairman who
 28 typically is a pilot employee of the carrier. The MEC is not a legal entity or labor organization; it is,
 instead, merely a subordinate unit of the international union.

1 That net 9% distribution could mean that, if all ALPA carriers had the same costs, at one of
 2 every ten ALPA-represented carriers, the carrier provides nearly total support. It also could mean
 3 that twenty percent (20%) of ALPA-represented carriers are fifty percent (50%) supported by the
 4 carrier. But, of course, nobody can pretend that ALPA representation at all 40+ carriers has the same
 5 costs. So it also could mean that a greater percentage of the carriers, that have the lowest cost of
 6 ALPA representation, provide the majority of the support to their MEC. The data might also show
 7 that carrier contributions largely sustain the individual MECs, while other sources of funding support
 8 the operations of the international union.

9 It also cannot be pretended, under ALPA's theory of the case, that how a carrier's
 10 "contribution" is allocated is unimportant. Only ALPA's own internal documents reasonably can be
 11 expected to tell the Court if, for example, ALPA reimburses a carrier for the compensation provided
 12 to pilots who devote all of their working time to ALPA business. If the carrier pays 100% of an
 13 MEC Chairman's income, and he or she spends all his or her working time on ALPA business and
 14 none flying for the carrier, the situation would seem to fall within the spectrum of what ALPA
 15 disingenuously tells the Court is unlawful as to SAPA and SkyWest.

16 SkyWest's objective is to show that its contributions to SAPA differ from the carrier
 17 contributions ALPA receives only by a matter of degree. To establish the industry common
 18 baseline, SkyWest must have data from ALPA that shows how much ALPA receives from each
 19 carrier, the purposes for which those contributions were made, and how the amount corresponds to
 20 the total funding of each MEC and of ALPA itself (*i.e.*, the international union). The limited
 21 sampling of CBAs ALPA has produced show what has been contracted for with a limited number
 22 (not the entire set) of carriers at which it the designated collective bargaining representative, but not
 23 the amounts. These CBAs also do not tell SkyWest or the Court if ALPA has been the beneficiary
 24 of extra-contractual payments from carriers. Even ALPA's limited sampling of CBAs, in short, tell
 25 only part of the story.³

26 ³ Section II.A. of ALPA's Opposition argues that SkyWest's requests for financial information are
 27 overbroad. The crux of ALPA's argument is that the ALPA's CBAs with the carriers whose pilots
 28 it represents provide all the information SkyWest requires. ALPA Opp. at 11:9-12:2. As explained
 in the text above, the contractual basis for payments by carriers, without the amounts, provides only

1 As the attached excerpts from ALPA's most current LM-2 shows, there is no possible way to
 2 discern the purpose of most payments received by ALPA from various carriers. *See* McClintock
 3 Dec., Attachments C (Other Receipts), D (Payer/Payee Report). There is, likewise, no way to
 4 discern whether, or the extent to which, payments made or owed by ALPA to the various carriers
 5 constitute full or partial reimbursement for payments the carriers made to their pilots who work full
 6 time for ALPA, or for costs incurred on behalf of ALPA. McClintock Dec., Attachment E
 7 (Accounts Payable).

8 It is not unimportant that nine percent (9%) of ALPA's total revenues comes from carriers.
 9 Standing alone, however, that fact tells a wholly incomplete tale. What matters more is which
 10 carriers that money comes from *and the purposes for which ALPA accepts it*. That information is
 11 not contained in, and cannot be discerned from, ALPA's LM-2s.

12 The CBAs tell part of the story. The LM-2s tell part of the story. The data SkyWest has
 13 requested in its discovery requests provide the linkage between the CBAs and the LM-2. Without
 14 this information the stories told by the CBAs and the LM-2s are meaningless.⁴

15 **C. ALPA Is The Most Convenient, Least Burdensome And Least Expensive Source
 16 Of The Information SkyWest Seeks**

17 **1. Service of Subpoenas On More Than Forty (40) Non-Parties Is Not More
 18 Convenient, Less Burdensome, or Less Expensive Than Discovery From
 19 ALPA**

20 ALPA objects to providing information sought by Interrogatory 3, Document Request 5,
 21 Interrogatory 5, and Document Request 7 and SkyWest's deposition notice. ALPA's objection is
 22 premised, at least in part, on an unfounded assertion that the carriers that provide the payments about
 23 which SkyWest asks have better access to the information than ALPA. ALPA Opp. at 12:18-20,
 24 15:5-6. ALPA asserts, for example, that the carriers "themselves routinely record the amount,

25 half of the story. The CBAs also tell SkyWest and the Court nothing about extra-contractual
 26 payments from carriers to ALPA.

27 ⁴ ALPA makes a number of wild accusations that SkyWest's discovery requests are made for the
 28 purpose of harassment. ALPA Opp. at 8:23-27, 9:27-10:11. This memorandum provides
 compelling reasons why ALPA should be required to respond to the disputed interrogatories,
 requests for production and deposition notices and makes clear that they are not propounded for any
 improper purpose.

1 purpose, and date of all compensation that they provide to ALPA pilots.” *Id.* at 12:23-24. That
 2 presumably would be true for the purposes of, for example, W-2 and related tax information. That is
 3 not to say, however, whether or how those carriers record when, if or why, ALPA reimburses the
 4 carrier. SkyWest does not merely ask for information about compensation provided to pilots – it
 5 asks for compensation provided to each pilot who is a “local or national ALPA officer, employee,
 6 agent, representative or committee member” who receives that compensation “by virtue of his or her
 7 status” with ALPA, *and for which the carrier is not reimbursed*. SkyWest Interrog. 3. No support is
 8 given for ALPA’s blanket assertion that the carriers have *all* the information SkyWest seeks
 9 because, of course, ALPA has no more way to know what those carriers’ internal accounting
 10 systems contain than does SkyWest or the Court.

11 Then ALPA goes for the truly absurd, proposing that SkyWest serve document production
 12 and deposition subpoenas, *see* Fed. R. Civ. P. 45, on the more than forty (40) non-party airlines
 13 whose pilots ALPA represents. ALPA Opp., pp. 13:13-14, 15:3-5.. It certainly would be less
 14 burdensome for ALPA to throw the cost of discovery, in a case that it filed, upon non-parties, but it
 15 is ludicrous to suggest that doing so would be “more convenient, less burdensome, or less
 16 expensive,” *see* Fed. R. Civ. P. 26(b)(2)(C)(i), than obtaining the information from ALPA.

17 Moreover, while ALPA reports that it does not “record *all* the information [sought by
 18 SkyWest] electronically, or track it in any other uniform transaction-by transaction format,” ALPA
 19 Opp., p. 12, it must somehow track information related to compensation paid or not paid to airline
 20 pilots who are officers, employees, agents or representatives of ALPA, for it does provide a name-
 21 by-name summary of the compensation paid to such employees on its LM-2. McClintock Dec.,
 22 Attachment F (Officers/Employee Report).

23 Not only would obtaining the materials SkyWest seeks from more than forty (40) non-parties
 24 be less convenient, more burdensome and more expensive, there also is no reason to believe, other
 25 than unsupported speculation from ALPA, that the carriers actually have *all* the information
 26 SkyWest seeks. ALPA should be compelled to respond to SkyWest’s Interrogatories 3 and 4,
 27 Document Requests 5 and 6, and its Deposition Notice.

1 ALPA's LM-2 Provides Inadequate Information

2 In refusing to respond substantively to SkyWest Interrogatory 4, Document Request 6, and the
 3 Company's Deposition Notice, ALPA tells the Court that SkyWest's demands will have to be met by
 4 the publicly available information provided by Schedule 14 of its LM-2 reports. ALPA Opp. at
 5 13:21-23, 14:12-13. As the attached excerpts from ALPA's 2007 LM-2 shows, that report does not
 6 disclose the purpose of the payments made by various carriers to ALPA or identify the nature or
 7 purpose of goods or services provided to ALPA by carriers. McClintock Dec., Attachments C and
 8 D. Those payments could be reimbursement for expenses incurred by ALPA or they could fall
 9 within the scope of "funds of the carrier [for] maintaining or assisting or contributing to any labor
 10 organization" under Section 2, Fourth of the RLA. There is, however, no way to know from the
 11 LM-2 the purpose of those payments. It is the documentation that ALPA uses to build its LM-2
 12 report that SkyWest seeks. The LM-2 does disclose, however, that there *is* source documentation for
 13 most of ALPA's receipts from carriers. McClintock Dec., Attachment A (itemized receipts for
 14 \$20,784,964 out of \$22,817,434 in "other receipts").

15 The data SkyWest seeks is not available from ALPA's LM-2 reports. They are not, therefore,
 16 an acceptable alternative to the materials sought by SkyWest's discovery requests.

17 **2. ALPA Is The Only Comprehensive Source Of The Information Sought
 18 By SkyWest Regarding Litigation Involving Claims That It Has Received
 Financial Support In Violation Of Section 2, Fourth Of The RLA**

19 SkyWest Interrogatory 13 and Document Request 30 seek information pertaining to
 20 *Barthelemy* and other litigation involving ALPA in which it was alleged that ALPA received funding
 21 in violation of Section 2, Fourth of the RLA. ALPA's answer to those requests is that SkyWest is
 22 asking ALPA to conduct its legal research, ALPA Opp., at 10:18-19, 15:11-12, and that any such
 23 documents are matters of public record, *id.* at 15:13-14. Both arguments completely miss the mark.

24 SkyWest is entirely capable of conducting its own legal research. That is not SkyWest's
 25 purpose. SkyWest seeks, rather, to find out when, why, and how often ALPA has taken the position
 26 it took in *Barthelemy* that the proper inquiry, in a case such as this is whether a carrier's payments to
 27 a labor representative or organization purpose resulted in actual domination of the union. SkyWest

1 can find published opinions; but as explained below, it is another thing altogether to find ALPA
2 statements (*i.e.*, admissions), in documents it has filed with other courts, that are squarely contrary to
3 the position it takes before this Court.

4 ALPA says that “litigation pleadings would be a matter of public record,” ALPA Opp. at
5 15:13-14, and then wants the Court to presume that they are easily located. It is true that litigation
6 pleadings are public records (unless sealed); but to equate that to ease of access is as absurd as
7 suggesting that SkyWest serve subpoenas on more than forty non-party airlines. ALPA will have
8 ready access to any pleadings in any case in which it has been involved, including those that were
9 settled without any court opinion and those for which, even if there were an opinion on the merits,
10 the decision was not published. The only way SkyWest would have any hope independently of
11 learning of all the cases that are within the scope of its request would be to search – electronically if
12 possible, and by hand if not – every docket of every local, state and federal court in the country since
13 ALPA was organized. After identifying the cases in which ALPA was a party, SkyWest would then
14 have to read the complaints to determine which cases involved a claim that ALPA accepted funding
15 in violation of Section 2, Fourth. To suggest that such a laborious and painstaking process is in any
16 way comparable to – let alone more convenient, less expensive or less burdensome than – obtaining
17 the documents from ALPA, is absurd.

18 ALPA should be compelled to produce the information sought by its Interrogatory 13, and
19 Document Request 30.

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1 **III. CONCLUSION**

2 For all of the reasons herein, SkyWest requests that the Court enter an order compelling
3 ALPA (a) to respond to SkyWest Interrogatories 3, 4, 5 and 14; (b) to respond to SkyWest document
4 requests 5, 6, 7, and 30; and (c) produce witnesses to testify in its Rule 30(b)(6) deposition about the
5 subjects covered in these interrogatories and document requests.

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7 Dated: July 10, 2008

WINSTON & STRAWN LLP

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9 By: /s/ Robert Spagat
10 Robert Spagat
11 Attorneys for Defendant
12 SKYWEST AIRLINES, INC.

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